

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0584P

Gross and Adjusted Income Tax
Fiscal Year Ended 01/31/96

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer, incorporated in Indiana was audited for fiscal year 1996. Upon audit it was discovered that the taxpayer failed to report all of its income at the high rate of tax. The department assessed a ten percent (10%) negligence penalty for failure to report income at the correct rate of tax. Taxpayer remitted seventy percent (70%) of the gross income tax due upon filing its return.

Taxpayer requests that the department waive the negligence penalty.

I. **Tax Administration** – Penalty

DISCUSSION

Taxpayer was assessed a negligence penalty because it failed to report income at the correct rate of tax.

At hearing, taxpayer stated the audit involved the classification of receivables and that taxpayer has, at all times, been compliant with state laws and paid its tax in good faith. Taxpayer states it should not be penalized for successful negotiations with the auditor regarding the tax issue, and the issue of whether the sale of inventory, i.e. receivables is subject to the high rate of tax is a matter of interpretation of law. Further, it was never audited through its New York office.

A review of the audit, however, indicates the taxpayer reported its sales of assets at the low rate instead of the high rate of tax and included its parent corporation in a consolidated gross income tax return. Since the parent was not an Indiana corporation, and was not qualified to do business in Indiana, it was removed from the consolidation.

Although the taxpayer may not intentionally have disregarded the laws and regulations of Indiana, it was negligent in failing to remit the proper income tax. In addition, the assessment resulted in thirty percent (30%) additional tax due.

The taxpayer did not show reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.